

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors.

RELATES TO: KRS 224.10-100, 224.10-110, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.53, 141.54, 141.64, 141.65, 141.130-141.135, 141.600-141.605, 141.620-141.629, 42 U.S.C. 300f through 300j-26

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) authorize the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the maximum contaminant levels for total trihalomethanes and haloacetic acid five (5) to limit the levels of known and unknown disinfection by-products.

Section 1. (1) A community or noncommunity water system [~~or a nontransient noncommunity water system~~] that adds a chemical disinfectant as a part of the drinking water treatment process shall meet the requirements established in 40 C.F.R. 141.130 through 141.135, 141.600 through 141.605, 141.620 through 141.629, 141.53, 141.54, 141.64, and 141.65[;

effective July 1, 2007].

(2) For the purposes of meeting the requirements of 40 C.F.R. 141.130 through 141.135 [effective July 1, 2007], consecutive systems shall monitor in the manner established in Section 2 of this administrative regulation.

Section 2. Consecutive water systems shall monitor for trihalomethanes and HAA5 as established in this section follows:

(1) For purposes of determining the applicability and compliance dates, the sum of the populations of the system producing the water and the system purchasing the water shall be used.

(2) Producers.

(a)1. A public water system that produces water and that provides water to another system shall be responsible for monitoring throughout the joint distribution system, which shall consist of the distribution systems of both the producing system and all purchasing systems.

2. Monitoring shall be performed pursuant to this administrative regulation at a point in the joint distribution system that reflects the longest period of retention.

(b)1. If more than one (1) system produces water sold to a distribution system, monitoring shall be divided between or among the producing systems by a plan that reflects the likely flow of each producing system's water.

2. A monitoring plan for total trihalomethanes and HAA5s shall be submitted by all producing systems and shall be approved by the cabinet pursuant to 40 C.F.R. 141.132(f) [effective July 1, 2007].

(3) Purchasers.

(a)1. A system that purchases water shall alter distribution operation and maintenance practices necessary to alleviate any potential exceedance of the MCL for TTHM or HAA5

1 anywhere in its distribution system.

2 2. The altered practices may include line flushing and replacement, changes to points of
3 disinfection, elimination of points of disinfection, tank turnover practices, or other changes to
4 facilitate reductions in levels of contamination.

5 (b)1. A purchasing system shall cooperate in the development of a monitoring plan required
6 from the producing system as established in subsection (2) of this section.

7 2. A purchasing system shall monitor for maximum residual disinfectant levels at the same
8 points in the distribution system and at the same time as total coliforms are sampled as
9 established in 401 KAR 8:200.

401 KAR 8:510, “Disinfectant residuals, disinfection by-products, and disinfection by-product precursors.” approved for promulgation:

Date

Henry “Hank” List, Deputy Secretary, FOR
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 16, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 8:510

Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation provides analytical techniques, monitoring requirements, and maximum contaminant levels for disinfection by-products, including the adoption of the Stage 2 Disinfection Byproduct federal regulation. It also identifies technologies to reduce such by-products if necessary.
- (b) The necessity of this administrative regulation:** The control of disinfection by-products is necessary to protect public health.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), requires the establishment of national primary drinking water regulations. 40 C.F.R. Subpart L, Sections 141.130 through 141.135, Subpart U, Sections 141.600 through 141.605, Subpart V, Sections 141.620 through 141.629, 141.64, 141.65, July 1, 2007 contain the national primary drinking water regulations for disinfection by-products.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** The control of disinfection by-products is essential to assure the purity of drinking water to protect public health.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** The regulation is being amended to include all non-community water systems as is required under 40 CFR Part 141 Subpart L and 141.65.
- (b) The necessity of the amendment to this administrative regulation:** KY did not initially include transient non-community water systems in this regulation as no current system falls under the requirements. KY's regulatory language is not consistent with the federal language and cannot meet primacy requirements. In addition, should such a system be formed in the future, the regulations would need to be revised, causing delays in system operation.
- (c) How the amendment conforms to the content of the authorizing statutes:** These citations will make the administrative regulation conform exactly to federal requirements for disinfection by-products.
- (d) How the amendment will assist in the effective administration of the statutes:** The adoption of the Stage 2 Disinfection Byproduct regulation will allow the cabinet to obtain primacy for the enforcement of these requirements. The use of federal citations instead of recreating federal language in state regulation will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to 491 public

water systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** There are no additional actions that regulated entities will have to take. This amendment just clarifies that the federal regulation applies.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** There are no additional actions that regulated entities will have to take. This amendment just clarifies that the federal regulation applies.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** Public water systems will benefit from working with the cabinet to meet these requirements as opposed to having to answer to the U. S. Environmental Protection Agency if the cabinet fails to obtain primary enforcement responsibility for these rules.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially:** The cabinet does not anticipate requesting additional money for this regulation.
- (b) On a continuing basis:** The cabinet does not anticipate requesting additional money for this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the drinking water program is federal funds provided to administer the requirements of the Safe Drinking Water Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes. This regulation differs in requirements for community water systems, non-community water systems, and transient non-community water systems.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 8:510

Contact Person: Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation applies to public water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 42 U.S.C. Chapter 6A, Subchapter XII, the Safe Drinking Water Act, and 40 C.F.R. 141_Subpart L, Sections 141.130 through 141.135, Subpart U, Sections 141.600 through 141.605, Subpart V, Sections 141.620 through 141.629, 141.64, and 141.65.

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for local governments for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not impose any new costs. There are some costs associated with compliance with the existing regulation that are unchanged. These costs would be incurred even without the amendment to this administrative regulation because the systems would be required to comply by the U. S. Environmental Protection Agency should the cabinet not obtain primary enforcement responsibility.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not impose any new costs. There are some costs associated with compliance with the existing regulation that are unchanged. These costs would be incurred even without the amendment to this administrative regulation because the systems would be required to comply by the U. S. Environmental

Protection Agency should the cabinet not obtain primary enforcement responsibility.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 8:510

Contact Person: Peter T. Goodmann, Assistant Director

1. Federal statute or regulation constituting the federal mandate.

The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), and 40 C.F.R. 141_Subpart L, Sections 141.130 through 141.135, Subpart U, Sections 141.600 through 141.605, Subpart V, Sections 141.620 through 141.629, 141.64, and 141.65.

2. State compliance standards.

KRS 224.10-100(28), 224.10-110

3. Minimum or uniform standards contained in the federal mandate.

The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), and 40 C.F.R. 141, Sections 141.130 through 141.135, Sections 141.600 through 141.605, Sections 141.620 through 141.629, 141.64, and 141.65 establish analytical techniques, monitoring requirements and maximum contaminant levels for disinfection by-products.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.